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All of the statements made at
this hearing are filed under
Prepublication Review in two
volumes.

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Polygraph

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225-8147

NINETY-EIGHTH CONGRESS

Congress of the United States

House of Representatives

LEGISLATION AND NATIONAL SECURITY SUBCOMMITTEE

OF THE

COMMITTEE ON GOVERNMENT OPERATIONS

RAYBURN HOUSE OFFICE BUILDING, ROOM B-373

WASHINGTON, D.C. 20515

LEGISLATION AND NATIONAL SECURITY SUBCOMMITTEE

Hearing on

The President's National Security Decision Directive 84
and Department of Defense Directive on Use of Polygraphs

Wednesday, October 19, 1983

Schedule of Witnesses

9:30 a.m.

Dr. Kenneth J. Coffey
Associate Director (Manpower, Reserve Affairs and Logistics)
National Security and International Affairs Division
U.S. General Accounting Office
Accompanied by:
Mr. Irving Boker, Evaluator-In-Charge, U.S. General Accounting Office

Dr. John H. Gibbons
Director
Office of Technology Assessment
U.S. Congress

Dr. John F. Beary, III
Associate Dean of Undergraduate Medical Education
Georgetown School of Medicine

Honorable George W. Ball
Former Deputy Under Secretary of State

Bob Schieffer, CBS News and Bruce Sanford, Counsel to the Society
Representing the Society of Professional Journalists

Lee C. Bollinger, Jr., Michigan University Law School
Lucas A. (Scott) Powe, Jr., University of Texas
Constitutional Scholars on the First Amendment

Honorable Mel Levine
Member of Congress, 27th District of California
U.S. House of Representatives

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Richard Willard
Head of the Office of Intelligence Policy
and Review
U.S. Department of Justice

General Richard G. Stilwell
Deputy Under Secretary of Defense for Policy
U.S. Department of Defense

Kenneth L. Blaylock
President
American Federation of Government Employees

Ralph Davidson
Chairman of the Board
Time, Inc.

Charles Rowe, Editor, The Free Lance-Star (Fredericksburg, Va.)
Representing the American Society of Newspaper Editors

Accompanied by:

Richard Schmidt, General Counsel to the Association

Joseph Ungaro
Executive Director, Gannett Newspapers
Representing the Associated Press Managing Editors Association

Jack Landau
Executive Director
Reporters Committee for a Free Press

Dennis Hays
President
American Foreign Service Association

Robert L. Park
Professor of Physics
University of Maryland
Representing the American Association of University Professors

Heather Grant Florence
Vice President, Secretary and General Counsel of Bantam Books and
Chairman of the Freedom to Read Committee of AAP
Representing the Association of American Publishers

Charles W. Maynes
Editor, FOREIGN POLICY Magazine
Former Assistant Secretary of State for International Organizations

Patricia Derian
Board Member
Representing The Fund for Free Expression
Former Assistant Secretary of State for Human Rights and Humanitarian Affairs

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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

NATIONAL SECURITY AND
INTERNATIONAL AFFAIRS DIVISION

B-206067

OCT 18 1983

The Honorable Jack Brooks
Chairman, Subcommittee on
Legislation and National Security
Committee on Government Operations
House of Representatives

Dear Mr. Chairman:

Subject: Effect of National Security Decision
Directive - 84, Safeguarding National
Security Information (GAO/NSIAD-84-26)

Your May 18, 1983, letter requested that we assist the subcommittee in its review of the subject directive which was issued March 11, 1983. (See enclosures IV and V.)

On June 14, 1983, you sent a questionnaire to those agencies and offices that handle classified information. You asked the General Accounting Office to review and analyze the responses, which we did. Subsequently, we were asked to obtain additional information from the agencies, pertaining primarily to their experience with unauthorized disclosures and the ensuing investigations. Most of the information obtained from the agencies, as a result of your questionnaire and our inquiries, is included in enclosure I. Enclosures II and III, respectively, include a listing of the Executive Branch agencies and offices that handle classified information and a summary of some of the information obtained from those agencies.

Executive Order 12356, on national security information, provides that the Director of the Information Security Oversight Office oversee agency actions to ensure compliance with the order and implementing directives. That office furnished us a listing of the agencies and offices handling classified information, which was used by your staff to mail questionnaires. The Central Intelligence Agency and National Security Agency were excluded from our summaries because of the sensitivity of their operations. We did not verify the information reported by the agencies; however, in many cases we requested clarification. Where actual figures were not readily available, agencies were

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asked to provide estimates. Therefore, our compilation includes actual figures and estimates.

Copies of this report will be sent to all agencies that provided information and to other interested parties upon request.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Frank C. Conahan". The signature is written in a cursive, slightly slanted style.

Frank C. Conahan
Director

Enclosures - 5

ENCLOSURE I

ENCLOSURE I

Responses To Questions Of The Legislation
and National Security Subcommittee
House Committee on Government Operations

QUESTION 1

Approximately how many full- and part-time people were employed by the federal government as of December 31, 1982?

RESPONSE

There were 5,137,280 federal civilian and military personnel.

QUESTION 2

Approximately how many federal employees and contractor employees had security clearances as of December 31, 1982?

RESPONSE

There were about 2.5 million federal and 1.5 million contractor employees with security clearances at the levels shown below.

<u>Level of clearance</u>	<u>Federal employees</u>	<u>Contractor employees</u>
Top Secret	463,599	266,922
Secret	2,054,906	940,324
Confidential	<u>17,378</u>	<u>305,507</u>
Total	<u>2,535,883</u>	<u>1,512,753</u>

Of the total number of federal employees--5,137,280--about 9 percent had top secret clearances and 40 percent had secret clearances.

QUESTION 3

Approximately how many federal and contractor employees had access to Sensitive Compartmented Information (SCI) as of December 31, 1982?

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RESPONSE

There were 112,660 federal employees and 15,090 contractor employees with SCI access.

QUESTION 4

Approximately how many federal employees had authority to originally classify information and how many could classify information on a derivative basis?

RESPONSE

There were 5,703 federal employees with authority to originally classify information and 2,484,541 who could classify information on a derivative basis. Derivative classification occurs when an individual (1) reproduces, extracts, or summarizes classified information, (2) applies classification markings derived from source material, or (3) follows instructions included in a classification guide. Generally, most federal employees can apply classification markings on a derivative basis up to, and including, their level of clearance. The following tabulation shows the number of individuals with original classification authority and those who can classify on a derivative basis.

<u>Highest level of classification</u>	<u>Number of employees who can classify information</u>	
	<u>Originally</u>	<u>Derivatively</u>
Top Secret	1,015	428,287
Secret	3,233	2,040,206
Confidential	1,455	16,048
Total	5,703	2,484,541

QUESTION 5

How many agencies used the polygraph during calendar year 1982?

RESPONSE

Six agencies--the Departments of Defense, Justice, Treasury, and Health and Human Services, Postal Service, and

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Tennesses Valley Authority--were using the polygraph; however, the latter four agencies were using it primarily in connection with criminal investigations and employee misconduct.

QUESTION 6

Approximately how many polygraph operators were employed as of December 31, 1982?

RESPONSE

Agencies employed 194 polygraph operators and had 14 under contract as of December 31, 1982. Twenty-eight of the government polygraph operators and the 14 operators under contract were not being used in connection with national security matters.

QUESTION 7

During calendar year 1982, approximately how many books, articles, speeches, and other materials were reviewed during the prepublication process?

RESPONSE

The following tabulation shows types and quantities of information reviewed during calendar year 1982.

Books	68
Articles	7,805
Speeches	2,887
Pages not specified	92,918
Articles & Books not specified	1,859
Other	7,463

QUESTION 8

What was the average number of working days that elapsed from the date of receipt of a request for prepublication review of a document to the date that the requestor was informed of the final results?

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RESPONSE

The following shows the range of time (in days) reported by the agencies for the prepublication process.

	<u>Number of days</u>
Books	9 to 30
Articles	1 to 22
Speeches	1 to 20
Others	5 to 74

QUESTION 9

During calendar 1982, approximately how many employees were assigned and how many working days were used for prepublication reviews, Freedom of Information Act requests, and requests for mandatory reviews for declassification under Executive Order 12356?

RESPONSE

Agencies used about 2,994 full-time employees and about 315,340 working days to review the three categories of information, as shown below.

	<u>Estimated number of employees assigned</u>	<u>Estimated number of working days used</u>
Prepublication review	145	9,276
Freedom of Information Act	2,577	295,312
Mandatory reviews	<u>272</u>	<u>10,752</u>
Total	<u>2,994</u>	<u>315,340</u>

QUESTION 10

How many unauthorized disclosures of classified information were there during calendar years 1978 through 1982? How many of these were made through writings or speeches of current of former employees, and how many involved SCI?

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RESPONSE

Eight agencies reported unauthorized disclosures of classified information during the 5-year period. Six of these agencies reported 328 known unauthorized disclosures of classified information. The other two agencies were unable to provide specific information. Of the 328 reported unauthorized disclosures, 21 were made through writings or speeches and, of these, possibly 2 involved SCI. (In one the disclosure was made during questioning by a reporter.)

QUESTION 11

How many unauthorized disclosures of classified information were investigated internally?

RESPONSE

Two Hundred Eighty-three cases were investigated internally.

QUESTION 12

As a result of the investigations of unauthorized disclosures, how many cases resulted in administrative action against the suspects and how many resulted in prosecution and conviction?

RESPONSE

Administrative action was taken in 11 cases, but there were no prosecutions or convictions.

QUESTION 13

In how many investigations of unauthorized disclosures was the polygraph used; what were the results of the polygraph; and when deception was indicated, how many cases resulted in administrative action?

RESPONSE

The polygraph was used 36 times during 2 investigations. Deception was indicated two times (nondeception indicated in the other 34), and administrative action was taken once.

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QUESTION 14

How many unauthorized disclosure cases were reported to the FBI for investigation?

RESPONSE

Thirty-nine cases were reported to the FBI for investigation.

ENCLOSURE II

ENCLOSURE II

EXECUTIVE BRANCH AGENCIES AND OFFICES
THAT HANDLE CLASSIFIED INFORMATION

Department of Agriculture
Agency for International Development
U.S. Arms Control and Disarmament Agency
Central Intelligence Agency
Civil Aeronautics Board
Department of Commerce
Department of Defense
Department of Education
Department of Energy
Environmental Protection Agency
Export-Import Bank
Farm Credit Administration
Federal Communications Commission
Federal Emergency Management Agency
Federal Home Loan Bank Board
Federal Maritime Commission
Federal Reserve System
General Services Administration
Department of Health and Human Services
Department of Housing and Urban Development
Department of the Interior
Board for International Broadcasting
U.S. International Trade Commission
Interstate Commerce Commission
Department of Justice
Department of Labor
Marine Mammal Commission
Office of Micronesian Status Negotiations
National Aeronautics and Space Administration
National Labor Relations Board
National Science Foundation
National Transportation Safety Board
Nuclear Regulatory Commission
Overseas Private Investment Corporation
Peace Corps
Office of Personnel Management
U.S. Postal Service
Executive Office of the President
Securities and Exchange Commission
Selective Service System
Small Business Administration
Department of State
Tennessee Valley Authority
Department of Transportation
Department of the Treasury
United States Information Agency
Veterans Administration

ENCLOSURE III

ENCLOSURE III

Information obtained
From Executive Branch Agencies
that Handle Classified Information

	<u>TOTAL</u>	<u>DEPT. OF DEFENSE 1/</u>	<u>DEPT. OF STATE</u>	<u>DEPT. OF JUSTICE</u>	<u>DEPT. OF ENERGY</u>	<u>NUCLEAR REGULATORY COMMISSION</u>	<u>DEPT. OF TRANSPORTATION</u>	<u>OTHER AGENCIES 2/</u>
Number of employees	5,137,280	3,350,582	14,688	58,536	17,390	3,770	99,749	1,992,565
Level of access: Agency employees—								
Top Secret	463,999	394,610	13,147	25,775	4,800	1,960	531	22,776
Secret	2,054,906	1,993,990	1,629	4,595	2,300	0	4,468	47,964
Confidential	17,378	9,325	0	869	0	1,810	266	5,102
Contractor employees—								
Top Secret	266,922	105,632	330	246	160,000	317	0	397
Secret	940,324	869,504	1,760	112	66,000	0	0	2,948
Confidential	305,507	304,996	110	80	0	219	0	109
CI access: Agency employees	112,660	102,107	4,352	2,472	240	42	40	3,407
Contractor employees	15,090	14,318	163	20	499	0	0	90
Agencies employing or contracting for polygraph operators	6	yes	no	yes	no	no	no	4
Number of polygraph operators employed in 1982:								
Agency employee	194	112	0	54	0	0	0	28
Contractor	14	0	0	0	0	0	0	14
Agencies with unauthorized disclosures of classified information in last 5 years	8	yes	yes	yes	yes	yes	yes	2
Number of known unauthorized disclosures in last 5 years	328	150	88	12	20	11	47	<u>4/</u>
Number made through writing or speeches:								
By then former or current employees	21	1	1	0	17	2	0	<u>4/</u>
Involving SCI	2	1	0	0	0	1	0	<u>4/</u>
Number of disclosures investigated internally	283	137	88	<u>3/</u>	0	11	47	<u>4/</u>
Number of disclosures reported to FBI for investigation	39	16	10	<u>3/</u>	13	0	0	<u>4/</u>
Number of investigations involving the use of a polygraph	2	2	0	<u>3/</u>	0	0	0	<u>4/</u>
Number of times polygraph used in investigations	36	36	0	<u>3/</u>	0	0	0	<u>4/</u>
When used, polygraph results showed:								
Deception	2	2		<u>3/</u>				<u>4/</u>
Non deception	34	34	N/A		N/A	N/A	N/A	<u>4/</u>
Inconclusive	0	0						
No opinion	0	0						
Number of times administrative action was taken when deception was indicated	1	1	N/A	<u>3/</u>	N/A	N/A	N/A	<u>4/</u>
Number of times administrative action was taken as a result of other investigations	11	5	4	<u>3/</u>	2	0	0	<u>4/</u>
Number of investigations resulting in prosecution and conviction	0	0	0	<u>3/</u>	0	0	0	<u>4/</u>

1/Does not include National Security Agency.

2/Does not include Central Intelligence Agency.

3/Information was not provided in time for inclusion in the chart.

4/Information was not available.

NATIONAL SECURITY DECISION DIRECTIVE - 84

Safeguarding National Security Information

As stated in Executive Order 12356, only that information whose disclosure would harm the national security interests of the United States may be classified. Every effort should be made to declassify information that no longer requires protection in the interest of national security.

At the same time, however, safeguarding against unlawful disclosures of properly classified information is a matter of grave concern and high priority for this Administration. In addition to the requirements set forth in Executive Order 12356, and based on the recommendations contained in the interdepartmental report forwarded by the Attorney General, I direct the following:

1. Each agency of the Executive Branch that originates or handles classified information shall adopt internal procedures to safeguard against unlawful disclosures of classified information. Such procedures shall at a minimum provide as follows:

a. All persons with authorized access to classified information shall be required to sign a nondisclosure agreement as a condition of access. This requirement may be implemented prospectively by agencies for which the administrative burden of compliance would otherwise be excessive.

b. All persons with authorized access to Sensitive Compartmented Information (SCI) shall be required to sign a nondisclosure agreement as a condition of access to SCI and other classified information. All such agreements must include a provision for prepublication review to assure deletion of SCI and other classified information.

c. All agreements required in paragraphs 1.a. and 1.b. must be in a form determined by the Department of Justice to be enforceable in a civil action brought by the United States. The Director, Information Security Oversight Office (ISOO), shall develop standardized forms that satisfy these requirements.

d. Appropriate policies shall be adopted to govern contacts between media representatives and agency personnel, so as to reduce the opportunity for negligent or deliberate disclosures of classified information. All persons with authorized access to classified information shall be clearly apprised of the agency's policies in this regard.

2. Each agency of the Executive Branch that originates or handles classified information shall adopt internal procedures to govern the reporting and investigation of unauthorized disclosures of such information. Such procedures shall at a minimum provide that:

a. All such disclosures that the agency considers to be seriously damaging to its mission and responsibilities shall be evaluated to ascertain the nature of the information disclosed and the extent to which it had been disseminated.

b. The agency shall conduct a preliminary internal investigation prior to or concurrently with seeking investigative assistance from other agencies.

c. The agency shall maintain records of disclosures so evaluated and investigated.

d. Agencies in the possession of classified information originating with another agency shall cooperate with the originating agency by conducting internal investigations of the unauthorized disclosure of such information.

e. Persons determined by the agency to have knowingly made such disclosures or to have refused cooperation with investigations of such unauthorized disclosures will be denied further access to classified information and subjected to other administrative sanctions as appropriate.

3. Unauthorized disclosures of classified information shall be reported to the Department of Justice and the Information Security Oversight Office, as required by statute and Executive orders. The Department of Justice shall continue to review reported unauthorized disclosures of classified information to determine whether FBI investigation is warranted. Interested departments and agencies shall be consulted in developing criteria for evaluating such matters and in determining which cases should receive investigative priority. The FBI is authorized to investigate such matters as constitute potential violations of federal criminal law, even though administrative sanctions may be sought instead of criminal prosecution.

4. Nothing in this directive is intended to modify or preclude interagency agreements between FBI and other criminal investigative agencies regarding their responsibility for conducting investigations within their own agencies or departments.

5. The Office of Personnel Management and all departments and agencies with employees having access to classified information are directed to revise existing regulations and policies, as necessary, so that employees may be required to submit to polygraph examinations, when appropriate, in the course of investigation of unauthorized disclosures of classified information. As a minimum, such regulations shall permit an agency to decide that appropriate adverse consequences will follow an employee's refusal to cooperate with a polygraph examination that is limited in scope to the circumstances of the unauthorized disclosure under investigation. Agency regulations may provide that only the head of the agency, or his delegate, is empowered to order an employee to submit to a polygraph examination. Results of polygraph examinations should not be relied upon to the exclusion of other information obtained during investigations.

6. The Attorney General, in consultation with the Director, Office of Personnel Management, is requested to establish an interdepartmental group to study the federal personnel security program and recommend appropriate revisions in existing Executive orders, regulations, and guidelines.

NINETY-EIGHTH CONGRESS

Congress of the United States
House of Representatives

ENCLOSURE V

ENCLOSURE V

LEGISLATION AND NATIONAL SECURITY SUBCOMMITTEE
OF THE

COMMITTEE ON GOVERNMENT OPERATIONS

RAYBURN HOUSE OFFICE BUILDING, ROOM 8-373

WASHINGTON, D.C. 20515

May 18, 1983

Honorable Charles A. Bowsher
Comptroller General of the United States
U.S. General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear General:

The Legislation and National Security Subcommittee is reviewing the Presidential Directive, "Safeguarding National Security Information," issued March 11, 1983. Because of the potential impact of this Directive on our security interests, the morale of Government employees, and the efforts of the Government to recruit well-qualified personnel, the inquiry is of special importance.

It would be appreciated if you would assist the inquiry by gathering the following facts pertinent to an evaluation of the Directive's possible impact:

1. a list of agencies which have classified material, the number of employees in each agency, and the current plans of each such agency to implement the non-disclosure agreements retrospectively or prospectively;
2. the number of persons, by agency and department and for the private sector, with access to classified information and Sensitive Compartmented Information;
3. the number of persons with authority to classify information;
4. the number of trained polygraphers employed by each agency or department in the Federal Government in that capacity and their required qualifications;
5. the number of persons currently employed in the pre-clearance for publication of employees' and former employees' written material by agency and department; the number of books, articles, and speeches they typically review in a month; and the average turn-around time for clearance of each type of material;
6. the number of unauthorized disclosures of classified information for each of the last five years of which the Executive Branch is aware; the highest level of classification of the material disclosed in each instance; and the highest classification to which the discloser (if known) was authorized access.

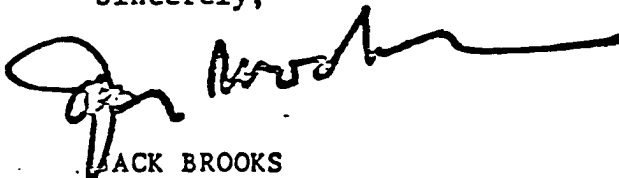
Honorable Charles A. Bowsher
May 18, 1983
Page 2

It is understood that certain agencies and departments may not be able to supply all of the data requested with specificity. If an estimate is all that can be obtained, the Subcommittee would appreciate learning the facts which might affect the parameters of the estimate. If the information is simply unknown, that fact will also be valuable. It is also possible that, as your work progresses, further areas which require more facts may appear.

Because of the magnitude of the policy involved and the possibility that the Directive will be implemented quickly, it is hoped that you will find it possible to devote maximum staff resources to this effort.

Thank you very much for your attention to this request. With every good wish to you, I am

Sincerely,

A handwritten signature in black ink, appearing to read "Jack Brooks", with a long horizontal flourish extending to the right.

JACK BROOKS
Chairman